

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

YANIEL AZCONA,

Defendant.

21-CR-742 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

On February 15, 2024, Defendant Yaniel Azcona filed a motion, pursuant to 18 U.S.C. § 3582(c)(2), for a reduction of his sentence pursuant to Amendment 821 to the United States Sentencing Guidelines, which went into effect on November 1, 2023, and applies retroactively. (ECF No. 43.) The Government filed an opposition to Azcona’s motion on March 1, 2024. (ECF No. 44.)

“In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment . . . is warranted” pursuant to Amendment 821, the Court must first “determine the amended guideline range that would have been applicable to the defendant if” the Amendment “had been in effect at the time the defendant was sentenced.” U.S.S.G. § 1.10(b)(1). U.S.S.G. § 1B1.10(b)(2)(A) then provides that, with an exception not relevant here, “the court shall not reduce the defendant’s term of imprisonment . . . to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.”

Defendant is ineligible for a reduction in his sentence. At sentencing, Azcona was assessed nine criminal history points, including two “status points” pursuant to then-applicable Section 4A1.1(d). Even if Azcona received only one status point pursuant to Amendment 821, his Sentencing Guidelines range would not change, as he would still remain in Criminal History

Category IV. Accordingly, Amendment 821 does not lower the relevant Guidelines range: Azcona's original Guidelines range was 77 to 96 months, and his amended Guidelines range remains between 77 and 96 months. Moreover, the Court sentenced Azcona to a below-Guidelines sentence of 60 months' imprisonment, precluding any relief under Amendment 821.

For the foregoing reasons, Azcona's motion is denied. The Clerk of Court is directed to close the motion at ECF No. 43 and to mail a copy of this Order to:

Yaniel Azcona
Register No. 73838-509
Schuylkill FCI
P.O. Box 759
Minersville, PA 17954

SO ORDERED.

Dated: March 11, 2024
New York, New York



J. PAUL OETKEN
United States District Judge